

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Nashville License Holdings, L.L.C.	)	Facility I.D. No. 73310
Licensee of Station WNAB(TV)	)	NAL/Acct. No. 0841420033
Nashville, Tennessee	)	FRN: 0003797305

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: March 26, 2008**

**Released: March 27, 2008**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Nashville License Holdings, L.L.C. (the “Licensee”), licensee of Station WNAB(TV), Nashville, Tennessee (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Rules, by failing to place in the Station’s public inspection file all required TV issues/programs lists and records concerning its compliance with the children’s programming commercial limits.<sup>3</sup> Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of fourteen thousand dollars (\$14,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>4</sup> Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station’s public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules.<sup>5</sup> These subsections of 73.3526 require licensees to place such records concerning its compliance with the commercial limits in the public inspection file by the tenth day of the succeeding calendar quarter.

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3526(e)(11)(i) and 73.3526(e)(11)(ii).

<sup>4</sup> See 47 C.F.R. § 73.3526.

<sup>5</sup> 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children’s programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

3. On April 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WNAB(TV) (the "Application") (File No. BRCT-20050401ARZ). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee maintained that it took sufficient steps and implemented procedures designed to ensure that its public inspection file was complete. Despite these efforts, the Licensee claimed, it was surprised to learn during an internal audit of its public inspection file in preparing the Application, that the public file was incomplete. Specifically, the Licensee reported that TV issues/programs lists for the first quarter of 2001 to the fourth quarter of 2004 had not been prepared or placed in the public file. The Licensee stated that upon this discovery, the Station's staff reviewed its records and prepared the lists to the extent possible from the documentation available. In addition, the Licensee indicated that during its audit it discovered that records regarding compliance with the commercial limits in children's programming for the fourth quarter of 2000 to the fourth quarter of 2004 were missing. The Licensee maintained that it subsequently obtained records concerning commercial limits compliance from the WB network and that it reviewed each program log since 2000 for the non-network children's programs to document its compliance for these quarters, and placed certifications regarding its compliance with the commercial limits in the public file in March 2005. In addition, the Licensee described new procedures it implemented to ensure that similar violations do not occur in the future. Finally, the Licensee requested that, in evaluating its Application, the Commission consider the licensee's efforts to "monitor its station employee's compliance with the public file requirement" and the steps it took when it discovered the omissions.<sup>6</sup>

4. Also, in Exhibit 19 and in a July 20, 2005 amendment to the Application, the Licensee stated that Station WNAB(TV) exceeded the children's television commercial limits on five occasions between June 30 2001, and August 18, 2001. Of those five overages, one was 15 seconds in duration, two were 45 seconds in duration, and two were one minute and 15 seconds in duration. The Licensee attributed the overages to inadvertence.

5. In a February 28, 2007 amendment to the Application, the Licensee reported that on December 23, 2006, the Station aired a CW Network commercial for Post Cereal's Cocoa Pebbles during the "Xiaolin Showdown" program. According to the Licensee, images from Post Cereal's postopia.com website appeared, including images of the website's navigation bar. The Licensee stated that the navigation bar included a "very brief" appearance of characters from the "Xiaolin Showdown" program.<sup>7</sup>

### III. DISCUSSION

6. The Licensee's failure to retain in its Station WNAB(TV) public inspection file all required TV issues/programs lists and records concerning compliance with the children's programming commercial limits constitutes a willful and repeated violation of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii). This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>8</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>9</sup> The

<sup>6</sup> In support of its argument, the Licensee cited, *WIGO, Inc. (WIGO-AM)*, Atlanta, GA, 85 FCC 2d 196, ¶50 (1981) (*WIGO, Inc.*)

<sup>7</sup> From the Licensee's description of the "Xiaolin Showdown" commercial, it appears that this incident is more akin to a violation of the Commission's "host-selling" policy, rather than a program-length commercial.

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>12</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.<sup>13</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>14</sup>

8. In this case, the Licensee acknowledged that its TV issues/programs lists for the first quarter of 2001 to the fourth quarter of 2004 had not been prepared or placed in the public file and its records concerning commercial limits for the fourth quarter of 2000 to the fourth quarter of 2004 were not placed in the public file. Although the Licensee maintained that it had procedures in place to prevent such violations, these efforts were apparently insufficient in light of the omissions it reported in its Application. Specifically, we note that required documents for several quarters were missing from the public file and that the licensee apparently was unaware of these deficiencies until it prepared its renewal application. Moreover, we do not believe that its efforts to supervise or monitor station employees or its corrective actions are mitigating circumstances in this case. The Commission has held that, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation.<sup>15</sup>

9. Further, we do not think that case cited by the Licensee establishes that a licensee’s efforts to supervise or monitor station employees or its corrective actions will excuse public file violations. Specifically, in *WIGO, Inc.*, the Commission reversed an Initial Decision recommending revocation of WIGO, Inc.’s license to operate station WIGO-AM, Atlanta, Georgia, for violating the Commission’s lottery rule. The Commission found that while the licensee’s principal stockholder was “legally responsible for the misconduct at the station”, in light of the efforts to supervise the station, a “forfeiture will be a significant and adequate deterrent in this case.”<sup>16</sup> Based on the record before us, we believe that a \$14,000 forfeiture is appropriate for the violations of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii).

#### IV. ORDERING CLAUSES

<sup>10</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>11</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>15</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

<sup>16</sup> *WIGO, Inc.*, 85 FCC 2d at 212.

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Nashville License Holdings, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Nashville License Holdings, L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>17</sup>

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Nashville License Holdings, L.L.C., 100 North Crescent Drive, Second Floor, Beverly Hills, California 90210, and to its counsel, Kevin F. Reed, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.